

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 TRAXCELL TECHNOLOGIES, LLC,) (
5 PLAINTIFF,) (CIVIL ACTION NO.
6) (2:18-CV-412-RWS-RSP
7 VS.) (MARSHALL, TEXAS
8) (
9 NOKIA SOLUTIONS AND NETWORK) (
10 US LLC, ET AL.,) (MAY 2, 2019
11 DEFENDANTS.) (9:01 A.M.

12 SCHEDULING CONFERENCE
13 BEFORE THE HONORABLE JUDGE ROY PAYNE
14 UNITED STATES MAGISTRATE JUDGE

15 APPEARANCES:

16 FOR THE PLAINTIFF: (See Attorney Attendance Sheet docketed
17 in minutes of this hearing.)

18 FOR THE DEFENDANT: (See Attorney Attendance Sheet docketed
19 in minutes of this hearing.)

20 COURT REPORTER: Shelly Holmes, CSR, TCRR
21 Official Court Reporter
22 United States District Court
23 Eastern District of Texas
24 Marshall Division
100 E. Houston
Marshall, Texas 75670
(903) 923-7464

25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

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Court Reporter's Certificate 45

1 COURT SECURITY OFFICER: All rise.

2 THE COURT: Good morning. Please be seated.

3 For the record, we're here for the renewed
4 scheduling conference in Traxcell Technologies versus Nokia
5 Solutions, et al., Case No. 2:18-412 on our docket.

6 Would counsel state their appearances for the
7 record?

8 MR. RAMEY: Good morning, Your Honor. Bill Ramey
9 for the Plaintiff, Traxcell Technologies, LLC.

10 THE COURT: All right. Thank you, Mr. Ramey.

11 MR. JONES: Your Honor, Mike Jones for the
12 Defendants, T-Mobile and Nokia.

13 THE COURT: All right.

14 MR. JONES: And we're ready to proceed, Your
15 Honor.

16 THE COURT: Thank you, Mr. Jones.

17 MR. MOFFA: Your Honor, Matthew Moffa with Perkins
18 Coie for Defendant, HMD Global OY, and as stated in our
19 motion to dismiss, we've not yet been served process, so I
20 believe we're not ready to proceed.

21 THE COURT: All right. Thank you, Mr. Moffa.

22 Let -- let me take that issue up first.

23 Mr. Ramey, would you talk to me about your
24 position as to the status of service of process on HMD?

25 MR. RAMEY: Yes, Your Honor.

1 Let me first apologize to the Court for not making
2 the Court's order -- the Court order that service be
3 complete by March 28th of this year, and we did make good
4 faith efforts starting on the day -- maybe within three
5 days of the previous scheduling conference to effect
6 service.

7 THE COURT: I've read the affidavit submitted by
8 your processor server. And it's very thorough. I
9 understand what efforts were taken up to the time that he
10 filed that.

11 Do you believe at this point that you have
12 accomplished proper service on HMD?

13 MR. RAMEY: Yes, Your Honor. As of yesterday, I
14 can confirm because I personally walked it to -- through
15 the process, that the First Amended Complaint has been put
16 in the mail to Texas Secretary of State to -- for them to
17 serve process on the Finland upon branch of HMD Global OY.

18 THE COURT: And tell me about your legal basis to
19 serve in that fashion as opposed to go through the Hague.

20 MR. RAMEY: Yes, Your Honor.

21 So the Federal Rules of Civil Procedure, Rule 4,
22 says any process that's allowed by the state. And the
23 state of Texas allows service of process through the Texas
24 Secretary of State for companies that are transacting
25 business in the state of Texas but don't have a registered

1 agent in the state of Texas or a physical location. And so
2 that's why we went in that direction, Your Honor.

3 THE COURT: And what -- what evidence do you have
4 that HMD is such a company?

5 MR. RAMEY: The -- the -- that the phones that
6 they offer, the Nokia phones that they offer are offered to
7 sell to everyone in Texas through the various wireless
8 providers and also on the website generally available to
9 anyone in Texas.

10 I would add one other thing, Your Honor, that we
11 have effected service of process through the Hague
12 Convention to the UK entity of HMD Global, and there is no
13 evidence in the record that the phones that they're selling
14 are not made in the UK. There -- there's just no evidence
15 that that's not proper service for the alleged infringing
16 devices.

17 THE COURT: Have you sued the UK entity?

18 MR. RAMEY: We were under the -- we are under the
19 impression that it's the same entity, Your Honor.

20 THE COURT: Well, if it's the same entity, why
21 would it be subject to service in the UK? It's my
22 understanding it's organized in Finland?

23 MR. RAMEY: Yes. They're -- the parent -- at
24 least there is an entity that's organized in Finland, Your
25 Honor. We looked at service through the Hague for the

1 Finnish company, and we felt there were other ways to do it
2 that were cost reasonable. There was a \$16,000.00
3 translation fee that would have attached to translating the
4 documents, and that was the -- our guiding reason to serve
5 the UK company because they speak a form of English in the
6 UK, and so that was the guiding principle, because service
7 isn't meant, of course, to -- to foreclose the ability for
8 people to serve process, only to give reasonable notice.

9 I mean, we -- we know HMD is on special appearance
10 here. But we've cooperated with them. We had an agreement
11 that they would waive service at one time until we
12 decided that -- and I have an email from -- I can go
13 through the -- the chronology of those events. We have --
14 until we wouldn't agree that they were improperly joined,
15 then they withdrew their agreement to waive service.

16 THE COURT: Well, the UK entity is a separate
17 entity from the Finnish entity?

18 MR. RAMEY: I don't know that, Your Honor, that
19 it's a separate -- I know it's an HMD Global OY entity, and
20 I don't have -- there's no evidence in the record that I
21 know of that the phones that we've accused of infringing
22 are not in part made --

23 THE COURT: I'm not talking about who infringed.
24 At this point, I'm talking about who you have sued, because
25 what I'm hearing is you have sued a Finnish entity and are

1 trying to serve it through a UK entity. Is that what
2 you're arguing?

3 MR. RAMEY: Yes, Your Honor, that is what we're
4 arguing.

5 THE COURT: How can you serve one entity through
6 another?

7 MR. RAMEY: If the other entity is controlling the
8 service there, that's how we were trying to effect service
9 on HMD Global OY through the UK entity.

10 THE COURT: All right. And do you have -- do you
11 have any legal authority for the proposition that you can
12 serve a parent through a subsidiary or -- which is what
13 this appears to be?

14 MR. RAMEY: No, Your Honor, we don't. We -- we do
15 not.

16 But I would add that, as I said earlier, we did
17 send the Texas Secretary of State proper service on the
18 Finnish entity yesterday, and the second part of our
19 response requested an extension of 60 days from the
20 original date you offered for us to -- or ordered us to
21 complete service of March 28th.

22 THE COURT: All right. Well, with respect to the
23 service through the Texas Secretary of State, obviously,
24 you understood that that would be -- or that service is
25 contested.

1 Do you have any case law that supports the use of
2 that service through the Texas Secretary of State to serve
3 a foreign entity under these circumstances?

4 MR. RAMEY: I didn't bring any of the case law
5 with me today, Your Honor, no.

6 THE COURT: But you believe it exists?

7 MR. RAMEY: Yes, Your Honor.

8 THE COURT: And talk to me about the facts, then,
9 about HMD's doing business in Texas. You're saying HMD
10 sells these phones, or does it simply manufacture them?

11 MR. RAMEY: Your Honor, HMD, for the limited
12 understanding we have, has a license agreement with Nokia
13 for a period of 10 years to take the plans of the HMD
14 phones and manufacture those phones.

15 The HMD Global name is on the Nokia website. The
16 Nokia phones are offered for sale through the various Nokia
17 websites, and it says sold -- you know, sold by or
18 manufactured by HMD Global at the bottom. So, Your Honor,
19 we would contest that that is sufficient evidence that HMD
20 Global is, in fact, selling the phones.

21 THE COURT: So your evidence would show that -- or
22 your evidence of sales is that the sales are offered
23 through websites that are available around the world,
24 including in Texas?

25 MR. RAMEY: Yes, Your Honor. And through -- yes,

1 Your Honor.

2 THE COURT: Do you have other evidence of -- of
3 activity by HMD within Texas?

4 MR. RAMEY: Sold through the various wireless
5 networks -- the AT&Ts, the Verizons, some sell the Nokia
6 phones, as well. We don't believe there were any on
7 the -- T-Mobile's website when we looked, but -- who's a
8 Defendant in this action.

9 THE COURT: What you're accusing here are phones
10 manufactured by HMD, and you're saying they're sold through
11 both Nokia and T-Mobile.

12 MR. RAMEY: Not through T-Mobile, Your Honor.

13 THE COURT: Okay.

14 MR. RAMEY: Sorry if I misspoke. We were not able
15 to locate any for sale on the T-Mobile's website.

16 THE COURT: What is the relationship between the
17 allegations between HMD and the allegations against
18 T-Mobile?

19 MR. RAMEY: Yes, Your Honor. So we have -- the
20 situation is we have various claims related to patents that
21 cover either, one, the wireless network, or, two, the cell
22 phone operating within the wireless network.

23 And so the cell phone that's manufactured is a key
24 component of the system. The wireless network is -- the
25 components are sold by Nokia. The wireless network is

1 operated by T-Mobile.

2 There's -- there's no question in our mind, and I
3 don't think HMD or Nokia or T-Mobile is going to disagree
4 with this, that the wireless phones manufactured by HMD
5 Global are not sold to be paperweights. They're sold to
6 work on a wireless network. They're sold to work on, for
7 instance, T-Mobile's wireless network. T-Mobile's wireless
8 network uses Nokia parts, as we've shown in our
9 infringement contentions which have been served on all the
10 parties.

11 So this is -- this is the same transaction or
12 occurrence, Your Honor. This is -- I mean, these phones
13 are sold for the very particular purpose of working on the
14 wireless networks that we've accused of infringing.

15 THE COURT: Well, is there any difference between
16 the role of HMD cell phones in this infringement and any
17 other cell phones? In other words, could you also include,
18 based on the same theory, any manufacturer of cell phones?

19 MR. RAMEY: Yes, Your Honor, in our opinion, we
20 could.

21 THE COURT: Okay.

22 MR. RAMEY: The claims -- the claims of the --
23 Your Honor, I know we have other pending cases in the
24 Court, so just a little bit of clarification if I may.

25 The claims of some of the patents involved in this

1 action are different than the claims involved in -- in some
2 of the other actions, that they actually are drawn more to
3 the workings of how the phone interacts with the wireless
4 network.

5 One of the -- the issues that we talked about
6 previously was that it wasn't a necessary component for
7 infringement other than just being a generic component.
8 Here, it does have to be a specialized component in -- in
9 the '388 patent and the '196 patent, at least, and probably
10 also in my opinion the '353 patent.

11 THE COURT: Well, show me the evidence that you
12 have in the record now about service on HMD through the
13 Texas Secretary of State, about that being complete.

14 MR. RAMEY: Yes, Your Honor, we -- as I mentioned
15 to the -- to the Court, we -- we served and we filed with
16 the Court through the Texas Secretary of State -- pardon
17 me, Your Honor. If I can open this up quickly -- two weeks
18 ago, and I don't have the exact date on this document, that
19 we had served through the Texas Secretary of State -- we
20 were surprised and I was not happy to receive the reply
21 from HMD that we had to serve through the Texas Secretary
22 of State that time the original complaint.

23 We have since filed a First Amended Complaint, and
24 so the record evidence we have of service with the Texas
25 Secretary of State is not in the file yet because it was

1 only effected yesterday, Your Honor.

2 And so the question becomes whether or not service
3 of the original complaint would have been -- put them on
4 notice, and our contention would be that service of the
5 original notice, which they've admitted in the record
6 through their reply document as having received, but the
7 fact that -- that it contained the original complaint.
8 That, we would think, puts them on reasonable notice of the
9 complaint, and we have kept Mr. Mc -- I'm sorry, kept
10 Defendant on notice through their counsel, Mr. McCabe, of
11 everything we filed.

12 And on 4/17, pursuant to the Court's docket
13 control order, we did serve our infringement contentions on
14 HMD Global.

15 THE COURT: Do you have copies with you of the
16 evidence that you're referring to that you just got of
17 proper service of the amended complaint through the Texas
18 Secretary of State?

19 MR. RAMEY: No, Your Honor. I was already on the
20 way up here by the time that that was mailed out, that
21 document was mailed. I do have an email copy showing that
22 the -- that proper postage was placed on the document, but
23 I don't have a printout for the -- for the Court.

24 THE COURT: And what this would show is that it
25 was mailed to the Secretary of State or from the Secretary

1 of State.

2 MR. RAMEY: To the Secretary of State, Your Honor.
3 I believe service is not effective until process has been
4 issued by the Texas Secretary of State, which usually, in
5 our experience, takes one to three days for them to put
6 together.

7 This is about 500 pages, big, large, thick
8 document. So I assume it would take them between two to
9 three days, Your Honor.

10 THE COURT: All right. Thank you, Mr. Ramey.
11 Let me hear from Mr. Moffa.

12 MR. RAMEY: Thank you, Your Honor.

13 MR. MOFFA: Thank you, Your Honor. And may it
14 please the Court.

15 I think Mr. Ramey's presentation has narrowed the
16 issue substantially. I think I'm hearing Mr. Ramey concede
17 that the service that he effected on the Secretary of State
18 previously was not proper. I think he's only relying on an
19 alleged service of our UK entity and then apparently a
20 package that was mailed yesterday that he has not yet
21 presented to the Court nor presented to us.

22 In brief, our position is that Your Honor set a
23 very reasonable schedule the last time that we were here,
24 which was that Mr. Ramey was to effect service on a date
25 that is six months after the filing of this complaint and

1 that other dates in the case schedule were to proceed
2 accordingly based on service by that date.

3 Service was not effected by that date, and
4 Mr. Ramey had an opportunity to effect service, Traxcell
5 had an opportunity to effect service and didn't.

6 Briefly, Your Honor, you -- to the argument that
7 we can be served through the Secretary of State, you asked
8 Traxcell's counsel what authority there is for service
9 through the Texas Secretary of State, and he pointed to
10 Rule 4.

11 Your Honor, if I can just clarify, the portion of
12 Rule 4 -- and this is mentioned in our reply brief at Page
13 2 -- the portion of Rule 4 that permits service following
14 state law for service of a summons in an action is Rule
15 4(e). That's the rule for serving an individual within a
16 judicial district in the United States.

17 Now, that's incorporated in Rule 4(h), which says
18 you can serve a corporation, partnership, or association in
19 a judicial district of the United States in the manner
20 prescribed by Rule 4(e)(1).

21 However, Rule 4(f) -- (m) says that there's a
22 90-day time limit for service in the United States, except
23 for service under Rule 4(f), 4(h)(2) or 4(j)(1).

24 So I'm sorry to thread you through this. But
25 there is no exception for service 4(h)(1)(A) incorporating

1 Rule 4(e)(1).

2 And that makes sense. The exception to the 90-day
3 time limit in Rule 4(m) is there because everybody agrees
4 it takes a while to serve a company under the Hague
5 Convention overseas. It doesn't take a while to serve them
6 under the Secretary of State.

7 And if Mr. -- if Traxcell, pardon me, had intended
8 to serve us under the Secretary of State, they could have
9 done so in September. They could have done so well before
10 Your Honor's deadline of March 28th. There's no reason and
11 no justification to excuse them a third time, and yet again
12 extend a deadline for us to be served under that method.

13 I also just want to say, Your Honor, that -- and
14 this is a -- I want to be delicate about this topic, but
15 Traxcell's counsel is making representations to Your Honor
16 about what was provided to the Secretary of State. And at
17 least two times now in this case, affidavits have been
18 submitted to the Court under oath about actions that have
19 since been repudiated.

20 So Mr. Ramey's processor server submitted an
21 affidavit on March 29th that said that there's a, you know,
22 improper method -- or informal of method of service that's
23 proper, and it constitutes mailing something by FedEx, and
24 I did that on the 28th.

25 However, the evidence we put in shows that wasn't

1 mailed until the 1st of April. And in his following
2 affidavit, Mr. Ramey concedes that he knew on March 29th
3 that service was improper, the same day that he filed that
4 affidavit in this Court.

5 And just so I'm not -- I'm not making statements
6 outside the record, I would -- I would point to Mr. Ramey's
7 individual affidavit that -- that he filed. This is Docket
8 49-2 on -- Paragraph 7, where he says my firm contracted
9 with a third party for service. On March 29th, my firm
10 learned service was not performed properly under the
11 federal rules.

12 However, for a month after, Mr. Ramey did nothing
13 to remove that affidavit from the record. Had we not
14 objected, he may well have left in an affidavit by this
15 process server saying that service was correct.

16 Now, Your Honor, I also point to Paragraph 8 in
17 that same affidavit where Mr. Ramey represents that -- he
18 says, I -- I then served personally through the Texas
19 Secretary of State the First Amended Complaint and the
20 proper summons.

21 Your Honor, that's incorrect, and Mr. Ramey
22 provided no evidence of that, but we provided a copy of
23 what went to the Secretary of State and what we received at
24 our Finnish entity, and it was not the First Amended
25 Complaint. And I believe I heard Mr. Ramey admit that

1 here. When -- when you asked him was service effected
2 properly, he -- he said, well, I -- I now realize I sent
3 the wrong complaint.

4 So I would respectfully ask Your Honor not to give
5 weight to representations by counsel about what has been
6 given to the Secretary of State, if only because twice now
7 he has made representations under oath that -- that
8 aren't -- aren't correct.

9 THE COURT: Well, Mr. Moffa, other than the timing
10 issue, which I understand, do you contend that service
11 through the Texas Secretary of State is not legally proper?

12 MR. MOFFA: Well, I haven't seen the authority
13 that Mr. Ramey says that he is aware of, and I don't see a
14 reason why that couldn't have been presented to the Court
15 at any time until now.

16 So I feel as a -- as a legal matter, there --
17 there may be mechanisms for serving a foreign entity
18 through the Secretary of State. However, the -- the
19 mailing of that service from the Secretary of State still
20 has to comply with the Hague Convention because it's a
21 transmittal of documents abroad, and there's certainly
22 authority for that proposition.

23 And in that sense, I cannot say whether
24 Mr. Ramey's service through the Secretary of State this
25 time is proper because we haven't seen how the documents

1 are being delivered to Finland.

2 THE COURT: In -- in what way would the Hague
3 require that documents be delivered? Are you saying they
4 would have to be translated or --

5 MR. MOFFA: No, there's -- there's not a
6 translation requirement. But they -- they would have to be
7 mailed within the right process. I believe that the
8 Secretary of State used registered mail last time, and that
9 would be proper, but, again, we would have to make sure
10 that the documents that are sent are legally operative, and
11 there's no evidence of what documents are being sent.

12 Your Honor, on multiple occasions, our client has
13 been sent the wrong summons, an unsigned summons, an
14 unsealed summons.

15 So if you're asking me as -- as an officer of the
16 Court to represent that there may be a mechanism under
17 which the right documents are sent in the right way to the
18 Secretary of State and the Secretary of State serves in
19 Finland and the -- the Plaintiff shows that the party being
20 served transacts business within the meaning of the Texas
21 Long-Arm Statute, there probably is a way to turn all of
22 those locks. But it's hard to discuss hypotheticals when
23 Plaintiff hasn't presented any evidence to the Court for us
24 to even look at.

25 THE COURT: Well, what would be the advantage of

1 dismissing the claims against HMD without prejudice at this
2 point?

3 MR. MOFFA: Well, Your Honor, as we stated in our
4 brief, our view is that we're improperly joined in this
5 matter. So at least it would save the Court and the
6 parties the issue of briefing joinder if we were in a
7 separate case.

8 I think it also would put Plaintiff to the task of
9 providing proper infringement allegations. I think Your
10 Honor did an excellent job of asking the question, you
11 know, is there any difference between the way HMD phones or
12 any other phones operate under his infringement
13 allegations? And, Your Honor, plainly he -- he said any
14 other phone would do.

15 I would also point Your Honor to the complaint in
16 the case, which does not distinguish between the -- the
17 roles of Nokia or HMD or T-Mobile or any other Defendant
18 and makes no allegations of joint infringement or divided
19 infringement. So there -- it would also clarify what
20 allegation, if any, is being made against HMD.

21 Your Honor, those -- those are prudential
22 concerns. In the sense, they're saving the Court time of
23 hearing those briefings, and they're saving the parties the
24 issue. I would also just say, Your Honor, that it's the
25 proper result. A party is entitled to -- a foreign company

1 is entitled to demand service of process, and the Court
2 doesn't have jurisdiction until they do.

3 If the Court doesn't have jurisdiction over us and
4 if the Plaintiff has received multiple reasonable
5 opportunities over seven months to effect that service, for
6 the authorities that we provided in our -- our brief,
7 dismissal is the appropriate outcome, and, again, if
8 Plaintiff wants to come back with a new complaint against
9 us and properly serve it, we will submit to the Court's
10 jurisdiction and be back here for our own schedule.

11 THE COURT: Talk to me about the improper joinder
12 theory that you have. I -- because that's been referred
13 to, but there hasn't been any briefing on that issue that
14 I'm aware of.

15 MR. MOFFA: You're exactly right, Your Honor, and
16 that isn't for wishing to withhold it from the Court.

17 Raising objections of joinder would potentially
18 constitute an appearance in the case, and because we
19 haven't been served yet, we simply haven't had the
20 opportunity. I would look forward to presenting in -- in a
21 written motion our positions on it.

22 Your Honor, this is an issue that we have
23 attempted to air out with Plaintiff. We were ordered to
24 meet and confer about joinder. Plaintiff sent us some
25 emails. We explained that under the local rules, we

1 understood that requirement to be a telephonic meet and
2 confer, especially if we're going to move for misjoinder,
3 but we never got a phone call back, so we actually haven't
4 had the chance to confer.

5 But -- but I will represent that the position is
6 essentially 35 U.S.C. 299, what was amended, to clarify
7 that there are proper and improper joint Defendants in a
8 case. And unless the Plaintiff alleges an actual acting in
9 concert or a divided or -- or joint form of infringement
10 where it's clear that one party is -- is creating the
11 direct infringement, it's improper to have the parties
12 joined as Defendants.

13 Otherwise, Plaintiff, as you rightly note, the
14 Court could add every cell phone manufacture to this suit,
15 put them all in a row, and claim to be able to bring them
16 all in because any cell phone will work in his network.

17 Just like a party that has a patent for a traffic
18 control device could add every car manufacturer and say,
19 well, your cars work on my roads, your cars go through my
20 stop light, so I'm entitled to have you as a Defendant in
21 the case.

22 The -- the fact is HMD uses the Nokia brand name,
23 and that's it. And so when a Nokia phone -- I'm sorry,
24 when an HMD phone is in one area, it might be on a Nokia
25 tower, when it's in another area, it might be on an

1 entirely different manufacturer's tower. When I bring my
2 Nokia phone to Texas, I might be on T-Mobile's network.
3 When I bring my phone to Louisiana. I might be on AT&T's
4 network. It doesn't matter. There's nothing tying the two
5 parties together other than the fact that we have a license
6 to use Nokia's name on the phone.

7 So for that reason, there's just no difference
8 between HMD and any other cell phone manufacturer, and that
9 is not a sufficient basis for joinder today, whether or not
10 it may have been under the former version of 35 U.S.C. 299.

11 THE COURT: And one of the things that's been
12 referred to in some of the briefing is the question of
13 severance. If the claims against HMD were severed from the
14 claims against the other Defendants in this case, would
15 that address the misjoinder issue that you've raised?

16 MR. MOFFA: If -- if we were severed into a
17 separate action and properly served, that would address
18 the -- the joinder issue that we have raised.

19 But, Your Honor, I just -- I respectfully submit
20 that with -- without some sort of fee shift, there's really
21 no way to unbake that cake. I mean, if you -- if you look
22 at the exhibit that we provided, this is Docket 44-5, so
23 this is Exhibit 4, this is the email conversation that we
24 had, I don't know if this is what Mr. Ramey was referring
25 to when he said that we agreed to waive service. To my

1 knowledge, we have never agreed to waive service.

2 But this was in February. And, Your Honor, in --
3 in February, we explained our joinder issue to -- to
4 Traxcell. We explained the issues of summons and service,
5 but we said if you agree to file a consent motion to sever
6 HMD Global from the suit or dismiss us and file a new suit
7 against us, we would agree thereafter to waive service for
8 HMD Global, and then we put what I believe is a very
9 reasonable condition, which is we get infringement
10 contentions directed to HMD, as would be required in a
11 separate action against HMD, and we get 90 days to serve
12 our invalidity contentions.

13 Your Honor, had Traxcell taken us up on that offer
14 and had he served infringement contentions, say, two weeks
15 afterwards, our invalidity contentions would be due earlier
16 than they are under Your Honor's proposed schedule. This
17 all would have been fine.

18 Traxcell deliberately chose not to and has then
19 presented misrepresentations to the Court on multiple
20 occasions, which only we provided the correct evidence for.
21 Only HMD. I -- my client has spent significant money and
22 time in the interest of putting a correct factual record
23 before the Court under Mr. Ramey's proposed approach to the
24 case.

25 I think now that he has made that choice, it would

1 be unfair to sever us, you know, allow the case to proceed
2 without proper service, and leave us holding the bill for
3 having put the facts in the case that were Plaintiff's
4 burden to put in.

5 And, Your Honor, I don't want to cast aspersions
6 at Mr. Ramey. So if -- if he wants to represent what he
7 would have done about those incorrect affidavits, incorrect
8 briefs in the absence of our presence, we certainly
9 should -- should hear from him.

10 But my impression based on what's happened so far
11 in this case is that Traxcell would have been happy to let
12 those rest, would have been happy for the Court to
13 incorrectly believe that it had taken jurisdiction over
14 this matter and that we had been properly served and to put
15 us on a rapid time table.

16 What you're proposing, Your Honor, was a
17 reasonable offer, but, respectfully, we made that offer,
18 and Plaintiff declined it. I don't see why there's a
19 second bite at that apple.

20 THE COURT: Well, I don't intend to let the case
21 proceed against HMD without proper service. So, you know,
22 whether you work out some arrangement whereby you waive
23 that, that's completely up to you and your client. But
24 what I'm trying to figure out is whether it would be more
25 fair to sever the claims out as opposed to dismissing for

1 failure to serve timely.

2 I'm -- after reviewing the record and the
3 affidavit of the process server, I think that while the
4 initial attempts to make service were misguided, once the
5 Court got involved in it, I think serious efforts were
6 made. They just have not yet, as far as the record shows,
7 been successful. But I don't think it's in the category of
8 cases where dismissal would be the appropriate remedy.

9 But I -- I haven't yet heard what I would consider
10 an acceptable answer from the Plaintiff about the joinder
11 issue. So let me get Mr. Ramey to respond on that point.

12 I thank you, Mr. Moffa.

13 MR. MOFFA: Thank you, Your Honor.

14 THE COURT: Mr. Ramey, tell me how your claims
15 against HMD are properly joined with those against Nokia
16 and T-Mobile under Section 299.

17 MR. RAMEY: Yes, Your Honor. This is the same
18 transaction or occurrence. They sell the phones
19 specifically to work with the components sold by Nokia on
20 T-Mobile's wireless network. So this is the same
21 transaction or occurrence.

22 THE COURT: What -- don't they also specifically
23 manufacture them to work on everybody else's networks?

24 MR. RAMEY: Yes, Your Honor. They -- they do.

25 THE COURT: So your argument would be the same for

1 a Chinese cell phone manufacturer or anyone else?

2 MR. RAMEY: Potentially. This -- this case is
3 different than the other cases before the Court because the
4 claims are drafted to covering the wireless device,
5 wireless communication device, the base claims, rather than
6 covering what we have before us, in essence a first
7 computer with a SON program that was connected to these
8 various components.

9 Now we're talking about a cell phone that is
10 specifically constructed to work in a prescribed manner.
11 And then that's why it's a different case, and work,
12 therefore, on the wireless network.

13 THE COURT: Aren't all cell phones specifically
14 manufactured to work in accordance with the standards?

15 MR. RAMEY: Not -- no, Your Honor. In fact, these
16 cell phones have to be -- have to be able to take in
17 mapping information from the wireless network, have to be
18 able to process the mapping information. So this is very
19 different than -- than a cell phone working as a cell
20 phone. This is providing navigation.

21 Not all cell phones can provide navigation. There
22 would be some that wouldn't. It's more -- it's more if
23 you -- I think the terms they use these days is smartphone,
24 but you could do it with a -- with a laptop or a Surface or
25 whatever, as well. But not all cell phones, Your Honor,

1 no. There are specific requirements for the cell phone to
2 be an infringing cell phone, so it wouldn't include all of
3 them.

4 THE COURT: Well, Mr. Ramey, before I can decide
5 the question of whether you've complied with your
6 obligation to serve HMD, I'm going to need to see the
7 documents that you are contending will satisfy that
8 service, which haven't yet been issued by the Secretary of
9 State to HMD.

10 I'm also going to have to see the authority that
11 you're relying on through the Texas statutes and have you
12 cite to that. And with respect to the joinder issue, I
13 will want to see what authority you have, that 299 should
14 be understood in the way you're suggesting that a cell
15 phone that is designed to, like many cell phones, work
16 within the networks that are operated by T-Mobile and I
17 guess the equipment of Nokia, that that would constitute
18 them beating -- being part of the same transaction or
19 occurrence.

20 And I'm just -- I haven't had that issue before
21 me, but I'm -- since the whole matter has been delayed for
22 this service issue, I don't see why we shouldn't get that
23 joinder issue resolved at the same time and decide whether
24 the claims against HMD, if you make proper service, should
25 go forward in the same or a separate action.

1 I get the sense that part of what is motivating
2 HMD is the question of prevailing party, and if HMD is
3 successful in this matter being dismissed, I guess that
4 will present other issues. So I think this is a decision
5 that has other consequences.

6 Let me hear from Mr. Jones as to the position of
7 Nokia and T-Mobile on this issue of severance or not.

8 MR. RAMEY: Thank you, Your Honor.

9 THE COURT: And Mr. Jones, I'm -- I'm just trying
10 to find out if your clients have a position on this or
11 whether -- I know you have a 12(b)(6) motion, but --

12 MR. JONES: Yeah, the position that -- that both
13 T-Mobile and Nokia have on this really is -- is the motion
14 to dismiss, which we have on file with the Court, which
15 involves many of the similar issues, because the
16 allegations against us, as pleaded and as clearly have been
17 pointed to in our motions, is that they don't point out
18 particular devices that contain claim limitations as
19 required.

20 And -- and that's been -- I think with regard to
21 the joinder issue has been one of the bases of the problem
22 here is that we really can't tell from looking at the
23 pleadings what the accused devices are and where we find
24 the limitations in the accused devices. And the pleadings
25 approach it in a very simplistic fashion, which is

1 basically, we have cell phones in a network, and they do
2 all these things, and they violate the rights of the
3 patentholder. But we don't specifically point out how
4 these are done by the various entities sued nor by the
5 various accused products.

6 And I would submit to the Court you really can't
7 figure out what the accused products were, which -- and
8 that's the argument basically with regard to direct
9 infringement.

10 With regard to induced infringement, as the Court
11 well knows, there are further requirements that, again, we
12 contend are not there. And then, finally, with regard to
13 willfulness, we don't think the allegations are pled there
14 with sufficiency to state the cause of action.

15 With regard to the service issue, as well as with
16 regard to the joinder issue, we really haven't taken a
17 position in the matter. I -- I think -- except for to
18 point out that the underlying pleadings cause a lot of
19 problems in this regard.

20 I think that we are totally content with whatever
21 the -- schedule the Court puts us on if it wants to take
22 time to resolve this matter. You know, obviously, it's
23 going to have an effect on the schedule, but other than
24 that, I would have to say we don't have a position.

25 THE COURT: All right. I thank you for that.

1 The original complaint was against HMD and Nokia,
2 and it was T-Mobile that was added in the amended
3 complaint, is that right, Mr. Jones?

4 MR. JONES: Yes, I believe that's correct.

5 THE COURT: All right. So you represent one of
6 the original Defendants, as well as the -- the newly added
7 Defendant, T-Mobile?

8 MR. JONES: That is correct, yes, sir.

9 THE COURT: All right. Thank you.

10 Mr. Ramey, you know, this is not a case where I
11 think the Plaintiff has ignored its obligation to make
12 service. I will say it's a case where it has not been
13 handled very well.

14 MR. RAMEY: Sure.

15 THE COURT: But I -- my inclination is to give you
16 an opportunity to complete service. I think that's the
17 primary interest of HMD is that it be properly served
18 before it has to go forward with anything else.

19 I've already given one opportunity for that. It
20 appears, based on the affidavit of your process server,
21 that it just wasn't enough time given the international
22 nature of this case to get it done. But it sounds like you
23 are staking your case on this Texas Secretary of State
24 service. You're -- you have not begun service under the
25 Hague?

1 MR. RAMEY: Not of the other entity. We -- we
2 will have started that by the time -- within an hour of me
3 leaving this courtroom, however, Your Honor --

4 THE COURT: Well --

5 MR. RAMEY: -- the Hague service.

6 I -- the -- if I -- if I can add a little bit
7 about the discussion, Your Honor, we had with the
8 third-party process server. One of the ways it can be, we
9 thought or we understood, was that they could do some sort
10 of personal delivery service in Finland, so that's why we
11 contracted with this third party.

12 They say said that's what they were going to do,
13 and it wasn't until we received back the FedEx mailing from
14 them that we realized that they hadn't done what they said
15 they would do.

16 THE COURT: How does that jive with the treaty
17 obligations under the Hague if you can just get around
18 those by having a personal delivery made?

19 MR. RAMEY: Your Honor, the Hague Convention says
20 anything that's allowed under Sweden, and my recollection
21 is that -- that the laws of Sweden would have allowed that
22 personal delivery by a personal person.

23 THE COURT: Is this Sweden or Finland? What are
24 we --

25 MR. RAMEY: Well, pardon me -- did I say -- pardon

1 me, Finland, Your Honor.

2 THE COURT: All right.

3 MR. RAMEY: I'm sorry. Yes, my apologies.

4 But that was -- my understanding is that the
5 research showed that, and so that's why we had gone with
6 the -- with this particular method of service. It
7 wasn't -- as soon as we learned it was wrong, we did file
8 the declaration providing that it was wrong. We didn't --
9 we weren't trying to misrepresent anything to the Court,
10 and on that -- on that vein, if I may -- well, never mind,
11 Your Honor. There's -- we have -- Mr. McCabe, lead counsel
12 for Defendant, HMD Global, and I have probably 50
13 communications back and forth on this -- on these issues,
14 so...

15 THE COURT: Well, tell me how much time you need
16 to file into the record proper -- what you consider to be
17 evidence of proper service through the Texas Secretary of
18 State.

19 MR. RAMEY: Yes, Your Honor.

20 Your Honor, sorry, I'm trying to figure out -- we
21 served the Texas Secretary of State on 4/8. They didn't
22 get back with us with -- showing that service had been made
23 for two weeks. So I don't anticipate that they'll be able
24 to get back with us much -- much sooner than that now, Your
25 Honor.

1 We would be willing, if it was easier for the
2 Court, to file an amended complaint and start the service
3 over again if that -- if the Court would prefer that.

4 THE COURT: Why -- why would that help?

5 MR. RAMEY: I don't think it would, Your Honor.

6 We're -- we --

7 THE COURT: Okay. Then I decline that offer.

8 MR. RAMEY: Yes, Your Honor.

9 The -- I'm hesitant to say because I don't know
10 when the witness certificate will be sent back to our
11 office. That's all I don't know, Your Honor. We had asked
12 for 60 days, which would put us until -- I believe, Your
13 Honor, was May 27th or May 28th, maybe -- whatever -- 27th.
14 I would think that if we could have until then, that should
15 be sufficient time.

16 THE COURT: Well --

17 MR. RAMEY: That was the relief we requested in
18 the original response.

19 THE COURT: -- the date that we pick now will be a
20 date by which you'll file your evidence, you'll file a
21 brief addressing the use of the Texas Secretary of State
22 for service in this situation, and addressing the joinder
23 issue raised by HMD.

24 And I'll give time for HMD to respond to those,
25 and I'll take it up. And -- and if I decide that your

1 service is still not enough, then I'll grant HMD's request
2 to dismiss, and you can do whatever you want to do after
3 that, but I think that's an adequate time.

4 If -- I'll also take up the joinder issue there.
5 If -- if I conclude that your service is proper, then I'll
6 take up the question of whether it should be severed or
7 not.

8 MR. RAMEY: Yes, Your Honor.

9 THE COURT: And with respect to the claims against
10 Nokia and T-Mobile, they'll just await the decision on how
11 the case goes forward, but do you have any questions about
12 what is required of you under that schedule?

13 MR. RAMEY: No, Your Honor, I wrote it down.

14 THE COURT: Okay. Mr. Moffa, I know that your
15 preference would be for dismissal at this time. I think
16 under the circumstances of this case, the Court's
17 discretion should proceed in the manner that I just
18 outlined. But if you have anything else that you think the
19 Court needs to take into account, I'll be happy to hear
20 from you.

21 MR. MOFFA: Yes. Yes, Your Honor, briefly.

22 And -- and HMD takes no issue with Your Honor's
23 exercise of discretion in its determina -- the Court's
24 determination what -- what's proper timing for a motion to
25 dismiss.

1 My concern, Your Honor, is that my client believes
2 that to date, the Court does not have jurisdiction over the
3 matter, and my -- my client intends to preserve that
4 defense to the fullest, including a collateral attack on
5 any judgment that might be issued in the case.

6 Now, Your Honor's proposal, if I understand it, is
7 that Plaintiff is going to file evidence of service within
8 60 days and a brief addressing the use of the Texas
9 Secretary of State, and then a brief on the joinder issue.

10 If -- our client could be put in an untenable
11 position, which is do not respond to that brief to preserve
12 its jurisdictional defense or respond to the brief and
13 thereby waive its jurisdiction by entering an appearance on
14 a substantive matter.

15 And like I said, Your Honor, the reason that we
16 have not briefed the joinder issue in full to date is
17 because we are preserving the defense that we're -- we're
18 not properly here. And five years from now if Mr. Ramey
19 has a judgment and wants to enforce it, my client has the
20 right to preserve its defense that the Court has not yet
21 taken jurisdiction.

22 So for that reason, Your Honor, a dismissal of the
23 case and a restarting of -- of a proper case with proper
24 service and addressing the joinder issue thereafter, if
25 there is a mechanism to do that, would allow my client to

1 preserve that defense.

2 So I think this is an unusual situation, Your
3 Honor, and perhaps one where while the prudent solution,
4 which is to give the Plaintiff more time and to try and get
5 these issues briefed because the case is getting long in
6 the tooth, just may not be properly effected. And I don't
7 want to consent to my client agreeing to respond on
8 substantive matters before the -- the Court has taken
9 jurisdiction.

10 In that sense, although, again, we respect and
11 take no issue with Your Honor's exercise of discretion,
12 that should be a consideration in what Your Honor decides
13 to do with the matter.

14 THE COURT: Well, I understand that, and I don't
15 think that this is a situation where your concern would be
16 alleviated by some statement or order from this Court that
17 it would not be concerned a waiver. What you're concerned
18 about is what some other Court might do in the future if
19 you collateral attack a judgment?

20 MR. MOFFA: Exactly, Your Honor.

21 THE COURT: All right.

22 MR. MOFFA: I think a dismissal and re-filing
23 would be clear as to whether the matter was commencing with
24 proper service or not.

25 THE COURT: Well --

1 MR. MOFFA: I don't think --

2 THE COURT: -- under the circumstances, I'll just
3 say that I will only expect a brief from you responding to
4 the service issues.

5 If -- if we end up not severing the claims and you
6 continue to believe that that's wrong and, you know, if HMD
7 continues in this case, in other words, the service
8 question is decided in favor of the Plaintiff, then you can
9 always raise the misjoinder issue after that, and that way
10 you won't run the risk of waiving your jurisdictional
11 issue.

12 Unless what you're telling me is that you think in
13 order not to waive the personal jurisdiction issue, you
14 need to refrain from any further participation in this case
15 regardless of what's decided on the sev -- on the service
16 issue.

17 MR. MOFFA: Your Honor, that's a difficult
18 question to answer. I think we -- we have done what the
19 case law makes clear is not an appearance. We can contest
20 jurisdiction under 12(b)(4) and 12(b)(5).

21 We did that under Your Honor's reasonable schedule
22 with reasonable time. Because of Plaintiff's dilatory
23 tactics and Plaintiff's responsibility alone, we're now in
24 the position where I'm being asked whether a second filing
25 on a more, you know, substantive matter of service, which

1 would not be an initial motion to dismiss, the one thing
2 that the Court says, you know, you may do, the Fifth
3 Circuit has said you may do without waiving your right of
4 appearance, you know, is that proper? And, again, this is
5 a case where my representation wouldn't suffice for a
6 foreign Court to address the -- the issue later.

7 So, Your Honor, I -- I do not know standing before
8 you whether we could contest that.

9 And my fear is that if we think it's in our
10 client's best interest to sit and make no response and
11 allow the Court to sort it out, how do we know that
12 Mr. Ramey is going to make a proper representation to the
13 Court of what has happened when twice now in this very case
14 he has failed to do so?

15 THE COURT: Well, those are hard questions that
16 you'll have to figure out with your client. But if you
17 choose not to respond, then I'll make the best decision I
18 can on the record that I have. But I -- whatever position
19 you think you need to take, I will not hold it against you,
20 so --

21 MR. MOFFA: Thank you, Your Honor.

22 THE COURT: But I will say the date, May the 27th,
23 the date Mr. Ramey was referring to, is Memorial Day. So
24 I'll set this at -- as May the 28th, and we'll go forward
25 on that basis.

1 And I will simply say in the order that any brief
2 that HMD does decide to file should be filed within some
3 period after that.

4 Is two weeks adequate if you do decide to address
5 the issue?

6 MR. MOFFA: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. MOFFA: Your Honor, may --

9 THE COURT: Go ahead.

10 MR. MOFFA: To make a clean record going forward,
11 could we get a representation from Plaintiff that Plaintiff
12 is not relying on the prior six methods of service? I
13 mean, Your Honor, I have spared the Court of addressing
14 this question of service on the UK entity. We certainly
15 have a view on that.

16 In the papers, it's clear that we were not issued
17 a proper summons at that time, and so for that reason
18 alone, that wasn't effective service.

19 Also, Traxcell previously represented to the Court
20 that service had not been effected under the Hague prior to
21 May 28th, then in kind of an a about-face, Traxcell took
22 the position, oh, we now know that we did effect service.

23 So can we just set a clear record that we no
24 longer have to address the six previous attempts at service
25 because the -- the Court understands those were not

1 effective service and is giving Plaintiff an opportunity to
2 file evidence of new service on the Secretary of State by
3 May 28th?

4 THE COURT: All right. Let me get Mr. Ramey to
5 address that.

6 MR. MOFFA: Thank you, Your Honor.

7 THE COURT: Thank you, Mr. Moffa.

8 Is that the Plaintiff's position that we are going
9 forward in reliance upon the service that is underway at
10 this time through the Texas Secretary of State?

11 MR. RAMEY: Your Honor, we're not going to -- we
12 will do further research. We didn't come prepared to
13 assist the Court today whether the previous service under
14 the Hague Convention was proper. We will research that to
15 verify to establish that it was not proper.

16 So we don't want to just -- to throw away that
17 service on that entity. But -- but we -- but we're not
18 going to -- we're going to rely on what we served on the
19 Secretary of State yesterday, as well, Your Honor.

20 THE COURT: Well, let's just talk about that for a
21 moment. You're saying that you served this UK entity
22 through the Hague?

23 MR. RAMEY: Yes, Your Honor.

24 THE COURT: But you agree that that is a different
25 entity from the entity you have sued?

1 MR. RAMEY: I don't know that as I stand here,
2 Your Honor, what -- the corporate arrangement of HMD Global
3 OY. That's all we wanted -- we want to flesh that out for
4 the Court so we don't misrepresent -- so nothing is
5 misrepresented.

6 And if -- and if we can't establish it in our
7 favor, we will -- we will gladly make that appear in the
8 briefing so that HMD doesn't have to address that issue.
9 We're not trying to increase anyone's cost here, Your
10 Honor.

11 THE COURT: All right. Well, in the filing that
12 you make on May 28th that includes the evidence of service
13 through the Texas Secretary of State, you should also
14 address your theory on the service through the UK entity
15 and any evidence you have that the UK entity is the same
16 entity that you have sued here.

17 I can tell you I'm skeptical that you can serve a
18 company organized in Finland through a company organized in
19 the UK. But I will allow you to address that issue in your
20 May 28th brief. But you should either give me what you
21 believe are persuasive authorities and evidence on that, or
22 simply acknowledge that you don't have them.

23 MR. RAMEY: Yes, Your Honor.

24 THE COURT: All right. Mr. Moffa, I know that's
25 not exactly what you're after, but I think that we have at

1 least narrowed it down to those two efforts at service, and
2 it should be clear to you in the brief that the Plaintiff
3 offers on May 28th what their position is. If it's not,
4 then before you file your brief, feel free to contact the
5 Court to get a further definition of the Plaintiff's
6 position before you file your brief.

7 MR. MOFFA: Thank you, Your Honor.

8 THE COURT: All right.

9 MR. RAMEY: Your Honor, may I --

10 THE COURT: Go ahead.

11 MR. RAMEY: May I address one -- do you -- do you
12 still want Plaintiff to address the joinder issue in its
13 initial briefing?

14 THE COURT: Yes, and I'll put that in an order so
15 that it will be clear. But, yes, I do.

16 MR. RAMEY: Thank you very much, Your Honor.

17 THE COURT: Because whether these cases stay
18 together or not is an issue that's important regardless of
19 your service of process. So I do want to get that
20 addressed.

21 I won't enter any further schedule at this time.
22 I know that the order that the Court issued setting this
23 conference up did have a few dates following the
24 conference. I don't know if those imposed obligations that
25 the parties want the Court to revisit.

1 In other words, do either of defense counsel want
2 to address that issue? If so, I'll take it up.

3 MR. JONES: Your Honor, if you could, and I was
4 about to ask this, does -- I assume Your Honor contemplates
5 that we may well have another hearing on this -- on this
6 issue after that briefing is done, and if that were to
7 occur, could we also set our motion to dismiss at the same
8 time?

9 THE COURT: I would think so. I'm not at this
10 point planning to set another hearing right away on that.
11 I'm hoping that I'll be able to just take it up on the
12 briefing, but once we figure out whether these Defendants
13 are going to stay on the same track, we can figure out how
14 best to address T-Mobile's motion.

15 MR. JONES: And our request would be that until,
16 number one, we -- we figure out how we're going and the
17 posture of the case, that -- that the dates be stayed until
18 that be done, and I do think with regard to the joinder, as
19 well as some of the other issues that have been raised
20 today, it would make all kinds of sense to deal with the
21 motions to dismiss at the same time the joinder issue is
22 being dealt with, and then come up with the appropriate
23 schedule for the case, and that would be our request, Your
24 Honor.

25 THE COURT: Let me see what the deadlines were

1 that were set following this. Oh, all right. Yeah, I will
2 go ahead and vacate that prior order that was entered on
3 February 26th that set this conference because, obviously,
4 the next date, which is to file a proposed docket control
5 order, doesn't make sense since we haven't given you dates
6 for that.

7 So rather than staying the case, I'll just vacate
8 those other deadlines that were set in the February 26th
9 order, and we'll take that back up after we have resolved
10 the service issue and the severance issue or joinder issue.

11 Mr. Ramey, is there anything else that you want
12 the Court to address for the Plaintiff?

13 MR. RAMEY: Nothing from the Plaintiff, Your
14 Honor. Thank you very much.

15 THE COURT: All right. What about for the
16 Defendants? Anything further, Mr. Jones?

17 MR. JONES: Nothing from my clients, Your Honor.
18 Thank you, sir.

19 THE COURT: All right. Mr. Moffa?

20 MR. MOFFA: No, Your Honor, and we thank the Court
21 for the attention to detail on this issue.

22 THE COURT: All right. Thank you.

23 In that case, we are adjourned.

24 COURT SECURITY OFFICER: All rise.

25 (Hearing concluded.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

5/15/19
Date